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AUG 8 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1941

No. 359.

CHINESE CONSOLIDATED BENEVOLENT ASSOCIATION, INC.,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

WILLIAM M. CHADBOURNE,
Counsel for Petitioner.

GERALD B. O'NEILL,
HENRY B. HYDE,
of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

The petition of Chinese Consolidated Benevolent Association, Inc., respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved.

The facts in this case are undisputed, all facts alleged in the complaint having been admitted by the answer, and the complaint being based upon an agreed statement of facts entered into by stipulation between counsel for the parties hereto. The defendant is a New York charitable organization, its objects, as set forth in its Certificate of Incorporation, being "to ameliorate the condition of the

Chinese poor in and about the City of New York * * * and generally to aid and succor all worthy Chinese who may be found to be in need of assistance."

On September 1, 1937, the Government of the Republic of China authorized the issuance of $560,000,000 principal amount of bonds, known as "Liberty Bonds", and later, in May, 1938, authorized the issuance of $50,000,000 principal amount of 5% United States Dollar Bonds, known as "Dollar Bonds". No registration statement pursuant to the Securities Act of 1933 as to these bonds has been in effect.

In October, 1937, the defendant organized a committee known as the General Relief Fund Committee (hereinafter referred to as the "Committee"), "for the purposes of uniting the Chinese community and the various organizations and societies thereof in aiding the Chinese people * * * and to solicit and receive funds from members of the Chinese communities in New York, New Jersey and Connecticut for transmittal to China for general relief purposes". The members of the Committee reside in the City of New York, are leaders in the Chinese community and serve voluntarily, having at no time received or expected to receive compensation for their services. Neither the Committee nor any of its members has any official or contractual connection with the Government of China or any branch thereof.

The Committee has from time to time held mass meetings at which information has been given out as to conditions in China and has made reports as to the results accomplished by it. Through the medium of such mass meetings, by personal appeals and by means of newspaper advertisements, the Committee has urged members of Chinese communities in New York and in the vicinity to purchase the bonds issued by the Chinese Republic.

In some instances, at the request of and for the convenience of prospective purchasers of the bonds, the Committee has received funds from prospective purchasers, has delivered all of such funds to the New York Agency of the Bank of China (hereinafter referred to as the "Bank"),

for the purchase either of the "Liberty" or the "Dollar Bonds" for the account of the prospective purchasers, and has delivered a receipt for the funds so received to the person from whom it received them. In all cases in which it has received funds the Committee has filed applications in the name and on behalf of prospective purchasers for the purchase of the bonds and has obtained receipts for the funds delivered to the Bank. The Committee has acted as an agent for the prospective purchasers only to the extent of delivering funds received by them to the Bank. Upon receipt of applications, either made personally or by the Committee for prospective purchasers, the Bank has transmitted the funds received by it to its agency in China with instructions to purchase the bonds for the account of the prospective purchasers.

Upon receipt of the bonds, the Bank has delivered them to the individual purchaser in accordance with his name and address appearing on the Bank's receipt. The Bank acts solely as an agent and makes no solicitation of the purchase of bonds or for the business involved in transmitting the money for the purchase thereof. No charge is made by the Committee for its services in connection with receiving funds to be used for the purchase of bonds and all such funds are delivered by it to the Bank for remittance to China. The members of the Committee receive no compensation, either from the persons who transmit money or from the Bank or from the Government of China or any department or agency thereof, or from any other source in connection with its activities.

In this action, the Securities and Exchange Commission sought to enjoin the defendant from alleged violation of Section 5(a) of the Securities Act of 1933 through the course of conduct by the defendant, outlined above. This case came before the District Court for the Southern District of New York where both plaintiff and defendant moved for judgment on the pleadings. A written opinion was handed down granting the motion of the defendant and denying the motion of the plaintiff. An appeal was taken

to the Circuit Court of Appeals for the Second Circuit where the decree below was reversed by a divided court, with directions to the District Court to deny the defendant's motion to dismiss and to issue the injunction as prayed for in the bill of complaint. Swan, J., dissented in a written opinion.

B

Reasons Relied On for the Allowance of the Writ.

1. The Circuit Court of Appeals in holding that the defendant has violated Section 5(a) of the Securities Act, because, as the Court found, it engaged in selling non-registered securities issued by the Chinese Government and because, as the Court found, it solicited offers to buy the securities "for value", has decided an important question of general law in a way probably untenable or in conflict with the weight of authority.

2. The Circuit Court of Appeals in holding that the defendant has violated Section 5(a) of the Securities Act, because, as the Court found, it engaged in selling non-registered securities issued by the Chinese Government and because, as the Court found, it solicited offers to buy the securities "for value", has decided an important question of Federal law which has not been but should be settled by this Court.

3. The Circuit Court of Appeals in holding that, as the Court found, the defendant has violated Section 5(a) of the Securities Act, because, as the Court found, it engaged in selling non-registered securities issued by the Chinese Government and because, as the Court found, it solicited offers to buy the securities "for value", has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record in the cause above entitled, and that the said decree of the United States Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

CHINESE CONSOLIDATED BENEVOLENT ASSOCIATION, INC.

By WILLIAM M. CHADBOURNE,
Counsel for Petitioner.